

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
ROBERT'S TOUR AND TRANSPORTATION,)
INC. and CARRY ALL, INC.)
For an Order Authorizing an)
Encumbrance on Property, Pursuant)
to Subsection 271-18(b), HRS.)

DOCKET NO. 2006-0461

DECISION AND ORDER NO. 23611

Filed August 24, 2007
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

RECEIVED

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BIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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_____)

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DECISION AND ORDER

By this Decision and Order, the commission approves ROBERT'S TOUR AND TRANSPORTATION, INC. ("Robert's")¹ and CARRY ALL, INC.'s ("Carry All")² (collectively, "Applicants") request to encumber property used for regulated transportation services, as described in its application filed on October 10, 2006, as supplemented on December 28, 2006, August 8, 2007, and August 21, 2007.

¹Robert's is a common carrier of passengers by motor vehicle over irregular routes on the islands of Oahu, Maui, Hawaii and Kauai in the 1-to-7, 8-to-25 and over-25 passenger classifications, pursuant to certificate of public convenience and necessity ("CPCN") number 821-C.

²Carry-All is a common carrier of property by motor vehicle authorized to operate in the general commodities classification on the island of Oahu, under CPCN no. 174-C.

I.

Background

By application filed on October 10, 2006,³ as supplemented on December 28, 2006 ("Application"), Applicants requested commission approval to encumber property used for regulated transportation services to finance the purchase of stock in Applicants' parent company, Robert's Hawaii, Inc. ("Robert's Hawaii"), by its employees through an employee stock ownership plan ("ESOP").⁴ By Decision and Order No. 23175, filed on December 29, 2006, the commission approved Applicants' request, pursuant to Hawaii Revised Statutes § 271-18(b).

By letter dated August 8, 2007, Applicants informed the commission that they had "satisfied most of the several steps necessary to satisfy [the] requirements of lenders and other governmental agencies" but that "[o]ne remaining aspect of the transaction [] require[d] this Commission's confirmation."⁵ According to Applicants:

³In connection with its Application, Applicants filed a Request for Waiver Associated With an Application for Approval to Encumber Property on November 22, 2006, seeking to waive the requirements of Hawaii Administrative Rules §§ 6-61-101(a)(3)-(5), 6-61-101(b)(2)-(9) except (4), 6-61-105(b) and (c), 6-61-75(a)(1)-(7), and 6-61-75(b)(1)-(2). As there appeared to be no legal basis to support the waiver request, the commission denied the request.

⁴The Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") declined to participate in this proceeding. See Consumer Advocate's Statement of Position, filed on December 13, 2006.

⁵Applicants' letter dated August 8, 2007, at 1.

In the original application, it was anticipated that Wells Fargo Foothill would be the lender of approximately \$100 million. Because the transaction required refinancing, the existing lender (GECC) was necessarily involved and when involved, did step forward with a proposal which requires less borrowing at a favorable rate, and with other terms substantially the same as those set forth in the December 8, 2006 application.

All of the public benefits associated with an ESOP remain intact. Significantly, with the original ESOP financing, Roberts' cash flow improved approximately \$674,000.00, annually, over status quo; with a new lender and revised terms, Roberts' cash flow will improve approximately \$1.85 million annually.

Applicants' letter dated August 8, 2007, at 1.

Applicants requested that "upon review of this correspondence and due deliberation, the [c]ommission provide the undersigned written confirmation that the [c]ommission's December 29, 2006 approval of the ESOP transaction, generally, and the [c]ommission's approval to encumber regulated assets, in particular, remain intact and in full force and effect. With such written confirmation in hand, it is anticipated . . . that the ESOP financial closing will occur by the end of August 2007."⁶

On August 21, 2007, Applicants supplemented their August 8, 2007 letter to note a change in one of the lenders.

II.

Discussion

As an initial matter, the commission is unable to confirm "that the [c]ommission's December 29, 2006 approval of

⁶Id.

the ESOP transaction, generally, and the [c]ommission's approval to encumber regulated assets, in particular, remain intact and in full force and effect," as requested by Applicants. In Decision and Order No. 23175, filed on December 29, 2006, the commission approved "Applicants' request to encumber property used for regulated transportation services as described in its application filed on October 10, 2006, as supplemented on December 28, 2006."⁷ Since the terms of the financing transaction described by Applicants have changed, the commission is required to review the new terms, as described in Applicants' August 8, 2007 and August 21, 2007 filings.

Haw. Rev. Stat. § 271-18(b) states in relevant part:

No motor carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity or permit; nor shall any motor carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity or permits, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission authorizing the same is void.

Haw. Rev. Stat. § 271-18(b).

Here, the commission has already approved Applicants' request to finance the purchase of stock in Robert's Hawaii by its employees through an ESOP. And, according to Applicants, the

⁷Decision and Order No. 23175, filed on December 29, 2006, at 3 (emphasis added).

changes to the financing terms as described by Applicants in their August 8 and 21, 2007 filings, are more favorable to Applicants. As such, based on the statements contained in the Application, and the competitive nature of the motor carrier industry, the commission finds that the proposed encumbrance is consistent with the public interest. However, the commission reserves the right to impose terms and conditions in the future if required by the public interest.

III.

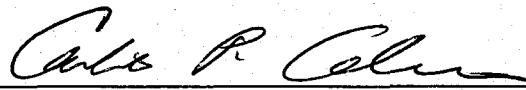
Orders

THE COMMISSION ORDERS:

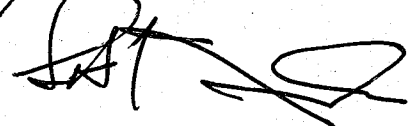
Applicants' request to encumber property used for regulated transportation services as described in its application filed on October 10, 2006, as supplemented on December 28, 2006, August 8, 2007, and August 21, 2007, is approved.

DONE at Honolulu, Hawaii AUG 24 2007.

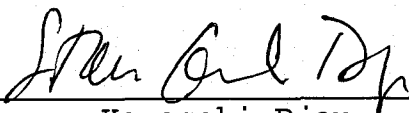
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2006-0461.eh

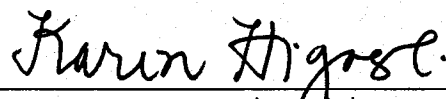
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23611 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

WILLIAM W. MILKS
LAW OFFICE OF WILLIAM W. MILKS
American Savings Bank Tower
Suite 977, 1001 Bishop Street
Honolulu, HI 96813

Counsel for Roberts Tour and Transportation, Inc. and
Carry All, Inc.



Karen Higashi

DATED: AUG 24 2007